

REMARKS/ARGUMENTS

In response to Restriction Requirement mailed July 5, 2005, Applicants elect with traverse Group I, claims 1-9 and 42-53, drawn to ADNF I and a method of inhibiting neuronal cell death. With regard to group I, Applicants elect the following species: SEQ ID NO:1. Applicants also traverse the restriction of Groups I, III, IV, V, VI, VII, and VIII.

Claims 10-18, 20 and 30 are cancelled. Claim 19 is amended to depend from claim 1. Claims 21-23, 25, 31-33, 35, and 36 previously depended from cancelled claims 20 or 30 and are now amended to correct this. Support for these amendments are found throughout the specification, for example, at original claims 19, 21-23, 25, 31-33, 35, and 36. These amendments add no new matter.

The foregoing election is made with traverse. Applicants request that Groups III, IV, V, VI, VII, and VIII, directed to *e.g.*, ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid or methods to use ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid; and Group I directed to ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid, be examined together, as the required ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid in Group I are also found in Groups III, IV, V, VI, VII, and VIII.

Applicants also assert that, at the very least, claim 1 is a genus claim linking ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid and pharmaceutical compositions comprising ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid and, *e.g.*, ADNF I polypeptides and methods to use ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid. As such, upon allowance of a linking genus claim, the restriction requirement should be withdrawn with respect to the species claims. MPEP 809.03. Applicants further note that when the requirement for restriction is predicated upon the non-allowability of a generic linking claim, Applicant is entitled to retain in the case claims to the non-elected invention. If the generic linking claim is allowed, the Examiner must then examine non-elected claims to species falling within the genus. MPEP 809.04.

Finally, restriction of an application is discretionary. A restriction requirement is made to avoid placing an undue examination burden on the Examiner and the Office. Where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. MPEP 803.01. Applicants respectfully submit that examining the claims of Groups I, III, IV, V, VI, VII, and VIII together (ADNF I polypeptides comprising SEQ ID NO:1 comprising at least one D amino acid and pharmaceutical compositions comprising those same ADNF I polypeptides and methods to use those same ADNF I polypeptides) would not place an undue burden on the Examiner. Applicants therefore respectfully request that the restriction requirement with respect to Groups I, III, IV, V, VI, VII, and VIII be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


Beth L. Kelly
Reg. No. 51,868

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
BLK:blk
60579503 v1